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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/901,479 | 07/09/2001 | Dane J. Hoechst | 018470-9053-00 | 5170 |

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EXAMINER

YEAGLEY, DANIEL S

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3611

DATE MAILED: 06/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/901,479

Applicant(s)

HOECHST ET AL.

Examiner

Daniel Yeagley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The Declaration and request for CFR filed 1/10/02 have been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

~~A person shall be entitled to a patent unless~~

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 - 4, 6, 8 - 10, 12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Guichard '321.

Guichard shows a motorcycle comprising a frame 2, engine transmission assembly 1 mounted to the frame with a drive sprocket 7 mounted to an output shaft of the engine, a rear wheel sprocket 8 mounted to a rear wheel 3 which is mounted to a swingarm 4 having a pivot member 5 interconnecting the swingarm for pivotally mounting the swingarm to at least one of a frame and engine transmission assembly for pivotal movement within a range of motion, such that the pivot axis of the drive sprocket and the pivot axis of the swingarm are non-colinear, the motorcycle includes the claimed feature of a flexible drive member 9 (drive belt) coupling the drive sprocket and the rear wheel sprocket, and further includes a tensioner 10 comprising a bracket and a roller wherein a method of the tensioner 10 is fixed to at least one of a frame and engine transmission assembly against both pivotal and translational movement with respect to the output shaft, such that; as best understood, the belt path length defined by the drive sprocket,

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the rear wheel sprocket and the tensioner remains substantially constant as the swingarm pivots such like that of applicants invention.

Claim Rejections - 35 USC § 103

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guichard '321 in view of Hatsuyama '069.

Guichard failed to show the swingarm pivotably mounted to only an engine transmission assembly. Hatsuyama shows a motorcycle having an engine transmission assembly mounted to the frame which clearly shows the prior art of a swingarm mounted only to the engine transmission assembly as claimed.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the art of Guichard frame mounted swingarm with the claimed tensioner and alternatively mounted the swingarm to another component such as the engine transmission assembly as taught by Hatsuyama swingarm assembly, simply as an alternative location for mounting the swingarm for pivotal motion of the rear wheel assembly which is well known and old in the art and would have been obvious dependent only upon design choice or user choice of an alternate frame structure such as shown in Hatsuyama utilizing the lower portion of the engine transmission assembly where no frame is available to mount the swingarm to the motorcycle.

7. Claim 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guichard '321 in view of Bernard '216.

Guichard failed to show the tensioner fixed only to the engine transmission assembly. Bernard shows a motorcycle having an engine transmission assembly mounted to the frame, which clearly shows the prior art of a belt tensioner, mounted only to the engine transmission assembly as claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the art of Guichard frame mounted tensioner and alternately replaced the tensioner on the frame with a belt tensioner mounted to the engine transmission assembly as taught by Bernard belt tension means as an alternative location for mounting the tensioner to engage the belt for removing slack and retaining tension in a drive belt which is well

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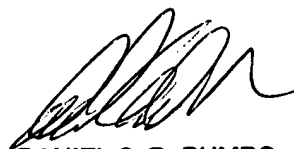
known and old in the art and would have been obvious dependent only upon design choice and/or structural limitations of the motorcycle components.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Pano '015, SUZUKI '815, Houze '624, Chambers '538 (figure 10), Belil Creixell '079 (figure 6), Pennell '579, Prince '277 (figure 4), Stoddard et al '821, Gibson '494, Scalise '606, Leitner '582, Shiraishi '026, Offenstadt '837 show a fixed belt tensioner mounted the frame of a motorcycle. Heathwaite et al '002 shows a fixed belt tensioner mounted to the swingarm. Muramatsu et al '118, Offenstadt '747 Kouyama et al '582 and Okada et al '185 show a swingarm mounted only to the engine transmission assembly.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is 703-305-0838. The examiner can normally be reached on Mon. - Thurs.. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on 703-308-0885. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

D.Y.
June 12, 2002



DANIEL G. DePUMPO
PRIMARY EXAMINER